In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1077

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al.,

Petitioners,

vs.

JAMES JONATHAN MAPP, et al.,

Respondents.

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Attorneys for Petitioners

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Pursuant to Rule 24 (5) the Court is advised that on Thursday, January 29, 1976, petitioner received in the mail a copy of an order of the United States Court of Appeals for the Sixth Circuit denying the petition for rehearing of plaintiffs-appellants, James Jonathan Mapp, et al, in No. 74-2100, which order was filed on Tuesday, January 27, 1976. Said order with dissenting opinion by Judge Edwards are reproduced as Appendix F to the above peti-

tion as docketed with the Clerk of this Court on Friday, January 30, 1976, having been placed in the mail to the Clerk of the Supreme Court on Wednesday, January 29, 1976.

Respectfully submitted,

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Attorney for Petitioners

February 16, 1976

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-2100

JAMES JONATHAN MAPP, et al,
Plaintiffs-Appellants,

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, et al,
Defendants-Appellees.

ORDER

(Filed January 27, 1976)

Before: WEICK, EDWARDS and ENGEL, Circuit Judges.

This cause came on for hearing on the petition for rehearing with a suggestion that it be reheard en banc.

Judges Edwards and McCree having requested en banc rehearing for the reasons set forth in Judge Edwards' dissenting opinion, but it appearing to the court that less than a majority of the court has voted in favor thereof, the petition for rehearing was referred to the panel which originally heard the appeal and was determined not to be well taken, Judge Edwards dissenting.

It is therefore ordered that the petition for rehearing be denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

Re: James Jonathan Mapp v.
The Board of Education of the City
of Chattanooga, Tennessee

No. 74-2100

EDWARDS, Circuit Judge, dissenting. Although the Board of Education of the City of Chattanooga has at long last, under orders of the Supreme Court of the United States, this court, and the United States District Court, proceeded to bring both its grade schools and junior high schools into compliance with the Constitution of the United States, as to two of its high schools it has signally failed to do so. The majority opinion of this court would establish as law the proposition that approximately 60% of the black children of the Chattanooga high school system may be continued forever in complete segregation in all black high schools. The two black high schools at issue were built as such under state law that required a racially dual school system and have been continuously segregated as such down to this very moment.

There can be no doubt that the two black high schools are racially separate public schools established and maintained by state action and that as to these schools there has been no desegregation at all. In my judgment it simply cannot be said with any accuracy that the possibilities for successful desegregation have been exhausted. As to these schools the School Board should be required to propose a new and realistic and effective plan to meet its constitutional duty.